VOL. CXIV. LONDON: SATURDAY, DECEMBER 16, 1950. No. 50

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LEGACIES FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. Training of future Church Army Officers and Sisters.
2. Support of Church Army Officers and Sisters in poorest parishes.
3. Distressed Gentlewomen's Work.
4. Clergy Rest Houses.

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary

THE CHURCH ARMY

55, Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

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RSPCA

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ROYAL SAILORS RESTS

PORTSMOUTH (1881) DEVONPORT (1876) GOSPORT (1942)

Trustee in Charge:
Mrs. Bernard Currey, M.B.E.

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

RICKMANSWORTH URBAN DISTRICT COUNCIL

Assistant Solicitor

ASSISTANT Solicitor required, salary A.P.T. Va (£550 to £610 per annum). The appointment is subject to the National Scheme of Conditions of Service and is superannuable. Applications, stating age, qualifications, including date of admission, experience, and the names of two persons to whom reference may be made should be sent to the undersigned not later than December 30, 1950.

C. G. RANSOME WILLIAMS,
Clerk of the Council.

Council Offices,
Rickmansworth.

CITY OF BRADFORD

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer in this city.

The appointment will be subject to the Probation Rules and the salary will be paid in accordance with the Rules. The salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Monday, January 1, 1951.

FRANK OWENS,
Clerk to the Justices and Secretary to the Probation Committee.

City Magistrates' Clerk's Office,
Town Hall,
Bradford.

CITY OF SALFORD

Assistant Common Law Clerk

APPLICATIONS are invited for the above position.

Local government experience desirable but not essential.

Salary scale £520—£570. The salary is subject to deduction for superannuation purposes, and the successful applicant will be required to pass a medical examination. Applicants must state whether or not they are related to any member of the Council or senior officer of the corporation.

Applications, stating age, full particulars of experience, and the names of two persons to whom reference can be made, should reach me not later than December 23, 1950.

H. H. TOMSON,
Town Clerk.

Town Hall,
Salford, 3.

COUNTY OF BERKS

Appointments of Deputy Clerk of the Council and Deputy Clerk of the Peace

APPLICATIONS are invited for the above-mentioned appointments. Candidates must have had considerable practical experience of the administrative and legal work of local government and of the work, procedure and practice at quarter sessions.

The salary of the Deputy Clerk of the Council will be £1,250 per annum rising by annual increments of £50 to £1,500 per annum. The salary of the Deputy Clerk of the Peace will be £250 per annum.

Applications, of which five copies must be provided, must be made on a form to be obtained from the undersigned and enclosed in an envelope marked "Appointment of Deputy Clerk" and must be delivered to the undersigned not later than January 8, 1951.

H. J. C. NEOBARD,
Clerk of the Peace and of the County Council.

Shire Hall,
Reading.

HARROW URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the permanent appointment of Assistant Solicitor in the department of the Clerk of the Council. Salary in accordance with A.P.T. Grades VI-VIII (£625-£790 per annum, including London weighting). If the successful candidate has had two years' legal experience from the date of admission he will be entitled to a commencing salary within A.P.T. Grade VII (£665-£740 per annum, including London weighting).

Candidates should be experienced in conveyancing and advocacy; and experience in local government, including planning law and committee work, is desirable.

The appointment will be subject to the scheme of conditions of service of the National Whitley Council; and to the passing of a medical examination.

The Council is unable to offer the successful candidate any assistance in obtaining housing accommodation.

Applications, endorsed "Assistant Solicitor," giving full details of age, present and past appointments, qualifications and experience, and the names of three persons to whom reference may be made, should reach the undersigned not later than December 30, 1950.

Canvassing will disqualify, and the applicant must disclose in his application whether he is related to any member or senior officer of the Council.

H. WELLS,
Clerk of the Council.

Council Offices,
Harrow Weald Lodge,
Harrow.

COUNTY BOROUGH OF NORTHAMPTON

Assistant Solicitor (Grade Va A.P.T. £550-£610)

PARTICULARS of the above appointment and forms of application, which must be returned by December 30, may be obtained from the undersigned.

Municipal experience not essential.

C. E. VIVIAN ROWE,
Town Clerk.

Guildhall,
Northampton.

CITY OF LEICESTER

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer.

The appointment will be subject to the Probation Rules, and the salary will be in accordance with the scale provided under those rules.

Applications stating age, qualifications, experience and present salary (if already serving), and accompanied by not more than three recent testimonials must reach the undersigned not later than Wednesday, January 10, 1951.

W. E. BLAKE CARN,
Secretary to the City Probation Committee.

Town Hall,
Leicester.

URBAN DISTRICT OF BEESTON AND STAPLEFORD (Population 50,000)

Appointment of Clerk of the Council

APPLICATIONS are invited for the above-mentioned whole-time appointment from legally qualified persons having wide experience in local government law and administration.

The salary of the appointment will be £1,500 per annum rising by annual increments of £50 to £1,750 per annum.

The salary given above is, except for personal fees as Returning Officer, etc., at local elections, an inclusive one and the person appointed will be required to undertake without additional remuneration all the legal work of the Council.

Every assistance will be given by the Council to the successful applicant to obtain suitable housing accommodation.

The terms and conditions of appointment together with a form of application may be obtained from the undersigned and should be returned not later than January 8, 1951.

Candidates should state whether or not they are related to any member or senior officer of the Council. Canvassing, directly or indirectly, will disqualify.

C. H. WRAGG,
Clerk of the Council.

Town Hall,
Beeston, Nottingham.

SITUATION VACANT

SOUTH West firm requires keen capable Solicitor to manage branch office in pleasant country town. Advocate essential. Partnership prospects offered. Write Box A.23, Office of this Paper.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Appeals and Committals for Sentence

Section 36 (3) of the Criminal Justice Act, 1948, enacts that where a case has been adjourned after conviction, the day on which the court sentences or otherwise deals with the offender shall for the purposes of s. 31 of the Summary Jurisdiction Act, 1879, be deemed to be the day on which the decision of the court is given. The words "otherwise deals with" would appear to include committal for sentence under s. 29 of the Criminal Justice Act, 1948, and therefore the defendant in such case is not in a position to serve notice of appeal against conviction until he is actually committed for sentence. An appeal would come before an appeal committee or court which would be competent to sentence him, and where an appeal has been lodged that would naturally be heard before the consideration of any question of sentence.

As a defendant has fourteen days in which to make up his mind whether or not to serve notice of appeal, it can happen that a defendant who has been committed for sentence under s. 29, and has in fact been sentenced, may thereafter serve notice of appeal against his conviction. An instance was reported in *The Times* of November 22. After being sentenced, the accused appealed against conviction and his appeal was dismissed. He then applied to the Court of Criminal Appeal for leave to appeal against sentence. This was refused, but in the course of delivering the judgment of the court, Byrne, J., said it was undesirable where a person convicted of an offence by a court of summary jurisdiction was sent to quarter sessions to be sentenced under s. 29 of the Criminal Justice Act, 1948, that he should be sentenced until the time in which he might appeal against conviction had expired.

Beacontree Juvenile Court

In his report on the work of the Beacontree Juvenile Court, which he says is the last he will make as chairman of the juvenile court panel, Sir Herbert Dunnico makes some encouraging statements and offers a certain amount of advice and criticism.

Statistics show a decrease in the number of cases brought before the court and this is mainly in respect of the more serious offences. Moreover, the number of offenders who have had to be brought back to the court while on probation shows a marked decrease. The report, after stating certain figures as to the disposal of cases, says that these suggest that some juvenile courts are now taking a sterner line, a policy which he hopes all courts will adopt. He feels that quite a number of cases are dealt with by probation which ought to be more severely dealt with by fines, approved schools or remand homes.

Some justices, it appears, have called attention to the decrease in prosecutions for non-attendance at school and truancy and to what is considered of even graver importance, the non-prosecution of boys breaking and entering schools. This, it is suggested, may be due to a failure to appreciate the methods of the juvenile courts. The report goes on: "It is the duty of those responsible for the education of the young to impress upon them that obedience to the law of the land is essential to good citizenship and that to condone offences, particularly indictable offences, is a dereliction of public duty."

In relinquishing the office of chairman, Sir Herbert Dunnico pays tribute to the services of his colleagues, the probation officers and the officials of the court, and he offers a reminder to justices that "the juvenile court is part and parcel of the general work of the court and that the whole body of the justices is responsible for electing the panel. It is their duty to make certain that it is composed only of those justices best fitted by experience to perform these important duties."

Conscientious Objectors

Our attention has lately been drawn to *The Third Shadow*, the eleventh annual report of the Central Board for Conscientious Objectors, by A. Joseph Brayshaw. The following extract, of interest to our readers, is printed verbatim and without comment of our own.

"One of the ameliorations of the law is contained in section 17 (2) of the Criminal Justice Act, 1948, which provides that 'No court shall impose imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate'.

"It was only a matter of time before a C.O. would present some bench of magistrates with a dilemma. Assuming that his character and record is excellent, the bench should avoid imprisoning the C.O. who is under twenty-one; but if they do so, then he does not get the minimum sentence of three months' imprisonment which, under the National Service Act, 1948, and its forerunners, alone qualifies him to have his C.O. claim considered further by a tribunal. This position came to a head when Norman Davidson of Romford came before the Stratford Magistrates on June 15, 1949, for failing to obey an order to submit to medical examination. In view of references giving Norman Davidson an excellent character, and in defiance of the Ministry of Labour view, Sir Herbert Dunnico, the chairman of the court, imposed a fine of £10. This was paid, and Norman Davidson was again prosecuted on November 2, 1949, and fined a further £10 with £3 3s. costs.

"At one time it even appeared as if this provision of the Criminal Justice Act would make the 'qualifying' sentence of imprisonment and the review tribunal a dead letter. But C.O.'s are on the whole anxious to show that they are prepared to

suffer privation and ignominy for their beliefs, and when these provisions have been explained to magistrates they have found little difficulty in deciding that imprisonment is, after all, appropriate. It is another question whether the Criminal Justice Act is achieving its avowed purpose of keeping minors out of prison.

"The anomalous position of the C.O. has been shown also under another section of the same Act. Section 56 (2) provides that where prisoners are under twenty-one when sentenced, the prison commissioners 'may direct' that instead of the usual remission of sentence for good conduct the prisoner shall be released on licence. Thus two young C.O.'s, David Young of Shepperton Lock, and Wynford Jones of Llandebie, found that after serving sentences for refusing medical examination they were subject for a further six months to regulations as to their associates and their being home by 9 o'clock at night; and they were placed under the supervision of after-care authorities devoted to the useful task of keeping criminals from further crime. This Gilbertian development followed a fine old tradition that all C.O.'s will recognize. It was so clearly absurd that the prison commissioners no longer apply this procedure in C.O. cases, and it only arises now by occasional accident which is quickly cleared up. But had there been no C.B.C.O. able to take up the point promptly and effectively, many more young men who had served imprisonment for conscience sake would have been subjected to irksome restrictions that would have humiliated their families; and if they had not complied they might have been reimprisoned for the remainder of their sentences. It is a notable example of the Board's quiet work behind the scenes."

Re-hearing

Justices who have adjudicated upon a case have, with very few exceptions, no power to re-open the matter, even if they find that there may have been a mistake and perhaps a miscarriage of justice. The remedy is by an appeal to a superior court by the aggrieved party, or in some cases it may be appropriate to make an application to the Home Office.

In New Zealand the law is evidently quite different in this respect, and magistrates have certain powers of re-hearing. *The Honorary Magistrate* for September contains a long judgment delivered by a stipendiary magistrate upon an application for a re-hearing. Apparently the judgments of stipendiary magistrates are cited in New Zealand in somewhat the same way as are the judgments of judges of the superior courts.

The application was by way of motion under s. 122 of the Justices of the Peace Act, 1927, based broadly on the ground of miscarriage of justice. The applicant had been summarily convicted and fined for stealing a sheep. Later a man who was said to be his accomplice but who could not be tried at the same time, was tried by jury and acquitted. The applicant did not appeal and he paid the fine promptly. When the alleged accomplice, who had been ill, appeared and was committed for trial. The grand jury (evidently not yet abolished in New Zealand), found a true bill and he was tried by jury and acquitted in the Supreme Court.

For the applicant it was submitted that the evidence of the acquitted man, which was not earlier available, could now be called, and further that the facts in the two cases were believed to be the same, so that the acquittal by jury of the one was a ground for re-opening the case of the other.

The New Zealand Statute

Some of our readers are probably familiar with the relevant words of the section of the New Zealand Act, but it may be worth while to quote them here: "Any Justice before whom any information has been heard may, in his discretion, grant a rehearing of such information—upon such terms as to him seem fit . . ."

The learned stipendiary magistrate cited the following passage from *Pitt Lewis on County Courts* as having been quoted with approval by a judge in New Zealand: "The grand leading principle on which the courts act in granting rehearings is simply this, that such a rehearing will be granted whenever there may have been a miscarriage of justice by the mistake committed." He went on to point out that there had been no indication of the kind of evidence the acquitted man might give, by way of laying the foundation for the submission that real doubt was created and that injustice had been done. Further the acquittal established no fact, but simply showed that the evidence did not satisfy that jury that the particular defendant was guilty. The same jury might not have had the same doubt about another defendant whose circumstances and occupation were different.

The magistrate found there had been undue delay in making the application, and was of opinion that the applicant had accepted his conviction as fair and just and the prosecution questioned the sincerity of the present proceedings. The application, the stipendiary considered, was out of time and wanting in merit and would accordingly be dismissed.

There seems no reason to doubt, after reading the report of this case, that the New Zealand law works well, but it is unlikely that the introduction of a similar procedure would find favour in this country. We have an adequate system of appeals, and now that quarter sessions can extend the time for appealing, there is less need than ever to confer upon a magistrates court a power to re-open a case upon which it has given a decision. At rare intervals an instance occurs in which magistrates would be glad if they could rectify a mistake of which they had become aware, but such cases must be dealt with by other means, and any general power for them to order a second hearing would probably give rise to many instances of dissatisfaction and inconvenience to the parties.

Rota for Cab Ranks

There seems, we said not long ago, no end to the problems thrown up by controlling hackney carriages in 1950 under a statute passed before 1850. The latest coming to our notice is whether a local authority can insist that proprietors and drivers shall keep cabs on certain cab ranks during certain hours. If the requirement were to be included in a byelaw under s. 68 of the Town Police Clauses Act, 1847, the first question would be whether it was *ultra vires*. The relevant power under that section is to make byelaws with respect to the conduct of proprietors and drivers of hackney carriages in their several employments. The ingenuity of draftsmen is infinite, and it might be possible to frame a byelaw which would say that drivers whose licences are numbered from 1 to 5 inclusive shall place themselves on the stand in High Street on Monday mornings: those whose licences are numbered 6 to 10 inclusive on the stand in King Street on Wednesday afternoons, and so forth and so on. This, however, is simply a matter of whether a draft on these lines could be framed. It is quite another matter to say that it would be workable or reasonable. Our view is that it would be neither. It would be extraordinarily difficult to enforce such a requirement: in fact, the local authority could only do so by putting it in the negative form, that a driver who was on the rota fixed by the byelaw should not, while plying for hire, stand elsewhere—this, because a positive requirement that he should stand in High Street or

King Street at a certain hour would fall down if he happened to fall ill, or to have already gone out on a job which took him beyond the appointed hour.

We do not remember to have heard of a byelaw in this sense, as being proposed by any local authority for confirmation, and we greatly doubt whether any local authority would try it. They are more likely to do what is apparently contemplated in the case brought to our notice, namely, try to impose the requirement on drivers by a condition of their licence, or on proprietors as a condition of the licensing of a cab.

The validity of such a condition could be tested by appealing to quarter sessions against the grant of a conditional licence or, if the conditional licence had been accepted, by breaking the condition and then resisting any proceedings which were taken to prevent the licensee from plying for hire after the local authority had purported to regard the licence as ineffective, by reason of breach of the condition. Either of these methods would test the validity of the condition, but either would be troublesome and expensive, and it would be better if the local authority were persuaded not to try to impose the condition at all. Parliament has not given express power to impose conditions—this argument may not get the person affected very far, because it has been a general practice for conditions to be imposed on cab licences and drivers' licences, and for the licensee to accept them and act upon them. Secondly, and more important, the attempted condition is a serious interference with the proprietors' method of doing business, and with the drivers' freedom of action. Upon examination of the Town Police Clauses Act, 1847, it is clear that Parliament did not contemplate the proprietor's being obliged to put his vehicles in places selected by the local authority: the provisions about fixing stands, placing vehicles elsewhere than on stands, and obstruction of the street, are all designed to prevent the proprietor or driver from putting vehicles in the wrong place, not to ensure that they shall put them in what the local authority consider to be the right place.

Rating Equally

Elsewhere in this issue we print an article by Mr. J. H. Burton, dealing with two aspects of the law and practice of rating, namely how to make the rate burden more even between householders, and how to make it more even between one year and the next. These are both elements in justice, even the "Rough Justice" of his title. But in introducing his first topic Mr. Burton surely does less than justice, even rough, to the present Minister of Health. Before reaching the front bench, Mr. Bevan had substantial practical experience of local government; works of reference state that he had been a county councillor since 1928 and, we believe, he was also chairman of the finance committee of a big urban district council. We should be slow to think that he would regard it as "rough," or any, justice that the occupier of a Piccadilly flat should pay the same rates as the occupier of accommodation of the same extent in a rural area, or even the occupier of a flat of the same size in a provincial town or a less sought after part of London. What Mr. Bevan had in mind, we have no doubt, when he spoke of "the same sort of property," was property which "roughly" is the same in all respects. He has, indeed, spoken elsewhere of the position arising in recent years, when upon three contiguous houses of the same size and the same age widely different assessments can be found, through the operation of causes beyond control by the rating authority and assessment committee.

In suggesting that our contributor seems to have done an injustice to the Minister, we are not expressing an opinion on the former's suggestion that it would be a good thing to relate liability for rates to the household income. This could be defended as a reversion to the original idea of local rating. Before the Reformation, when poor relief was a matter for charity alone, the Church attempted to ensure that almsgiving was according to ability, and in the poor law statutes of Edward VI and Elizabeth the parish officers, dispensing the new official charity made necessary by the new political conditions, were required to levy contributions according to ability to pay. It was more than a couple of centuries before ability came to be measured uniformly (in theory) by the value of the ratepayer's premises. Politically, we imagine there is in the generation which has successfully, in theory, revolted against means tests, no more chance of measuring by Mr. Burton's test of family income than by the length of the ratepayer's foot, but his suggestion is at any rate a reminder of the break-down in the circumstances of today of the nineteenth century test, and perhaps of the desirability of breaking entirely new ground in local government finance.

PERMITTED HOURS AND REGISTERED CLUBS

By F. G. HAILS

The holder of a justices' licence to sell intoxicating liquor is apt to regard the club registered under the provisions of the Licensing (Consolidation) Act, 1910, with a jealous eye, for he certainly labours under some disadvantages in comparison. Apart from the fact that a policeman, save in those cases where special hours certificates have been granted in the metropolis under the Licensing Act, 1949, s. 19, requires a warrant under the Licensing (Consolidation) Act, 1910, s. 96, to enter a club, whilst he can demand entry to other licensed premises at all times to enforce the law by virtue of s. 81 of that Act, a club may be opened without the necessity of application for a licence, whilst the annual formalities of renewal of registration are not open to the threat of objection on any of the grounds mentioned in the 1910 Act. It is true that by virtue of the Defence (General) Regulations, 1939, No. 55 (*r*), the Chief of Police has a right to object to the registration of new clubs on certain specified grounds, but unless such objection is made the clerk to the justices for the district has no option but to register the club if the application appears to be in order. Moreover, whilst there may be a development charge under the provisions of the Town and Country Planning Act, 1947, a club is not obliged to pay monopoly value, nor is it under the obligations of the Innkeepers Liability Act, 1863, which, by a recent decision at assizes (*Williams* v. *Linnit*, Warwick Summer Assizes, 1950, 66 T.L.R. 712), has been held to render an innkeeper responsible in damages for the theft of the car of a customer in his bar. So far as children are concerned, the Children and Young Persons Act, 1933, s. 5, makes it an offence for any person to give intoxicating liquor to a child under the age of five save under doctor's orders, but s. 6 prohibits the entry of a child under fourteen to a bar of licensed premises during permitted hours, and the Intoxicating Liquor (Sale to Persons under Eighteen) Act, 1923, forbids sale to such persons by licensees, neither of these latter restrictions applying to clubs. It is true that no right minded licensee thinks of selling to such persons, but he does resent the fact that a club

is not similarly restricted, for there is little doubt that the fact that parents may take their children into clubs is an advantage to these institutions.

In the fixing of the hours in which intoxicants may be sold clubs have the privilege, denied to licensees, of fixing, within the limits laid down by the licensing justices, and subject to a two hour break after mid-day, their own times (Licensing Act, 1921, s. 1), whilst this same Act puts them on all fours with licensed premises so far as applications for orders of general or special exemptions are concerned (1921 Act, *supra*, s. 6 and sch. I, Part 2). It is true that clubs may supply only drink to members, and that they may not apply for an occasional licence, but when the privileges they enjoy in matters analogous to this last are fully realized, there would seem to be very heavy cause for complaint by the licensed victualler.

It is strange that there is so much misapprehension as to the power of clubs to supply liquor to members in premises other than those for which they are registered, on special occasions. At least one large body to which a great number of clubs are, in its own phrase, "affiliated," makes no bones about telling those clubs just what their rights are, to the astonishment of some justices' clerks and police officers, whilst many a magistrate would be horrified if he knew just how the law stood in this respect, for a club can supply liquor to members away from the premises where it likes and when it likes, on special occasions. The first case to be considered is *Humphrey and another* v. *Tudgay* (1915) 79 J.P. 93. Here the Ashtead Village Club held a supper and smoking concert at a school a quarter of a mile distant from the club premises, and at 11.30 *p.m.* two police officers saw two members, in the words of the Case Stated, "serving the intoxicating liquor and taking money." The officers spoke to these men, who admitted doing this, and one of them said "I have got it in black and white from the workmen's union that we do not require a licence." Proceedings were taken against them for selling intoxicating liquor by retail without a licence, contrary to the Licensing (Consolidation) Act, 1910, s. 65, and they were convicted. On appeal the Divisional Court were unanimous in holding that, following *Graff* v. *Evans* (1882) 46 J.P. 262, the supply of intoxicating liquor to members of a club did not constitute a sale, and that the appeal must be allowed and the conviction quashed. Darling, J. (as he then was), pointed out that a prosecution under s. 94 of the Act, which we will discuss later, might have succeeded.

In the Case Stated one of the facts mentioned as proved or admitted was that one of the defendants had said that at the time of the sale at the schools the club itself was closed, and this has given rise to an idea that it is necessary, where a club desire to meet elsewhere, for the main premises to be abandoned for the time. There is nothing in the judgments, or indeed in any other authority, so far as the writer is aware to support this theory, and it seems that it makes no difference at all what happens at the premises for which the club is registered.

The point as to proceedings under s. 94, *supra*, was disposed of in *Clarke and Peacock* v. *Griffiths* (1926) 90 J.P. 152. Here a club, registered in respect of premises in Station Road, Llanbradach, supplied drink to members at premises, which were not registered as a club under s. 91 of the Act of 1910, some distance from the Station Road premises. Proceedings were taken, under s. 94, for supplying intoxicating liquor for consumption off the premises, otherwise than on the premises, and here again there was a conviction and an appeal. The section appears to be designed to prevent the delivery of intoxicants sold for consumption off the premises, and the prosecution contended that the supply had taken place at the registered premises and that the drink had been delivered at the others. The Divisional Court were unanimous, although regretful, in rejecting this contention, so it is clear that the point raised by Darling, J., some years before is disposed of. It is true that Avory, J., reserved his opinion on the question of whether an offence under s. 93 had been committed: this section applies the penalty for conducting an unregistered club and it appeared a not unreasonable inference that the supply at the unregistered premises was habitual. Section 91 of the 1910 Act makes it quite clear that it is only where the supply of intoxicants is habitual that registration is necessary.

In the next case in point, *Watson and another* v. *Culley* (1926) 90 J.P. 119, the Hockwold Village Club provided a special supply of refreshments for the use of its members at the village fair, who were supplied with drink in a room adjoining the fairground, at premises away from the registered club, which, incidentally, was closed on the day of the fair. The committee of the club gave instructions that drinks were to be supplied at any hour during the day, an instruction which was carried out, and at 4.30 *p.m.* the police swooped, later proceeding against various persons for offences against the Licensing Act, 1921, s. 4, for supplying liquor out of permitted hours. Once again there was a conviction, once more a successful appeal, once more it was unanimous. The gist of the decision was that the offence was only committed by a club when, in the words of the section, the supply was "in any licensed premises or club," and that the word "club" means, in this context, "the premises of the registered club." There was also a reservation, again by Avory, J., that "if this practice became general it might lead to proceedings under s. 95 of the Licensing (Consolidation) Act, 1910, on the ground that the club was not conducted in good faith . . ."; it is plain that the learned judge did not contemplate proceedings against a club whose use of the privilege was not so habitual as to amount to an abuse.

Before turning to a general summary, it might be as well to recall, briefly, the case of *Graff* v. *Evans*, *supra*, which is the corner stone of club law. Here it was decided that a "sale" means the sort of transaction which takes place between shopkeeper and customer in a shop, whilst the distribution by a committee of liquor purchased by that committee among members of a club in accordance with the rules of that body, is not a sale. It was this decision which led to the use of the word "supply" in legislation in connexion with clubs.

Earlier in these notes reference was made to the fact that these provisions are not so widely known as they might be: in spite of this many clubs have their own marquees or rooms at sporting and similar events, but the fact remains that it is not unusual for application to be made for special exemptions, so called, by clubs who are holding special functions away from their registered premises. It is interesting to refer to two Practical Points from this journal. The first, from 96 J.P.N. 354, says that if a special exemption is granted for the club premises drinks may safely be supplied at premises specially hired for the occasion. The second, which is given in 100 J.P.N. 397, deals with the question of an application for a special exemption order at the "special premises," and the answer is that no such order can be made. With the second answer the writer respectfully agrees; as to the first, he does not think it would make the slightest difference, although he agrees to this extent, that it would be advisable to notify the police as a matter of courtesy and to avoid misunderstanding.

The question of whether an individual club is misusing its privileges is a matter for police consideration, and action if necessary, in the first place, and then for the court to decide if information is laid. It is improper for a court to do anything which might lead the club into error, and so embarrass either defence or prosecution: the court has no power to interfere before the event in this case, and should refrain from so doing.

ROUGH JUSTICE

By J. H. BURTON

Most people would say they knew the meaning of the adjective in the title of this contribution. Perhaps they are only concerned in its application in the particular circumstances which they have in mind on a given occasion. The many and varied definitions, however, when one reviews them, impress one with the wisdom which is really behind the observation generally regarded with derision—" it depends what you mean by . . ."

The question is truly interesting when considered in the light of current facts and figures in connexion with a remark of the Minister of Health in reference to local rates.

Mr. Bevan, when addressing a body composed of chairmen of local government finance committees and municipal treasurers at Torquay in 1947, said that " two citizens, occupying roughly the same sort of property should pay, roughly, the same sort of contribution to rates." Presumably the Minister meant (roughly) that a house in one town containing, say, six or eight rooms ought to draw as rates, about the same figure that all other dwellings of six or eight rooms in any other sort of area, should be required to bear.

The occupier of a flat in Piccadilly, London, might agree with him, while his rustic counterpart in the heart of rural Britain would not. Yet both might be occupying property more than " roughly " of the same sort.

In a sense—one in which the Minister is hardly likely to have meant—he was right, since both do pay the same " *sort* of contribution to rates," that contribution being one calculated by means of a rate poundage on a rateable value. If, however, the Minister implied, roughly, the same *amount* of rate, as he probably did, then he, perhaps unintentionally, was being rough on one or the other tenant.

Whether there ought to be more equality in local government matters is a moot point with which this article does not purport to deal. What it does stress, however, is that there is not uniformity or equality, even in spite of the efforts sought through legislation of recent years.

Numerous examples of this could be given and doubtless every reader will know of others which perhaps are peculiar to local authorities situated similarly to their own. The truth of this is evident from figures relating to services. For example, rate poundage for roads in one or more areas is 10*s.* while in others it is only 1*s.* 6*d.*, the average for the whole country being 4*s.* Many other things are not equal. For instance, local authorities are not subject to the Rent Restriction Acts while housing associations and even Development Corporations of the new towns are.

An erroneous notion is held by many and assumed by even more. It is backed by or perhaps based on the belated and quite out of date statistics published five years ago and relating to the position thirteen years back. What could be more misleading than to use 1937 facts and figures in 1950 and the while assume them to be applicable now? Then, family budgets and other allied factors were vastly different from those of today. At that bygone time it was thought that rates were regressive because the proportion of the total family expenditure which they represented was greatest in the lowest income group. Circumstances are now different. Whereas the total family income then was, perhaps, only £3 to £5 a week, all untaxed, it is now £20, frequently more, since wives, and children of 14 or 15, are earning £4 to £5 per week each, while direct income tax on the total family earnings is still almost negligible.

Equity would now seem to be more nearly achieved by a redistribution of rate liability approximating to the 1937 position; not in order to make the less able people pay an unconscionable part of the total family income in rates, but so that :

1. A reasonable proportion would have to be paid as rates ; and 2. these people would pay a little more because they now derive more benefit from public expenditure than : (*a*) in the past ; and (*b*) those in higher individual income groups.

In any worthwhile examination of the problem of ability to pay and reasonableness of having to do so, actual rate payments (not rateable values or rate poundages) in relation to actual total net (*i.e.*, taxed) family incomes, duly weighted by benefits actually received, are factors which should be taken into account. Actual figures now, not probable figures an eighth of a century ago, are needed, if a true picture is to be seen.

Unfortunately, neither the new valuation basis nor a continuation of the old one can or could offer much, if any, reliable indication of either the fairness of the rating system or its justice, while big families, many members of which are earning comparatively high wages, live in small, low rated houses and flats.

It would seem that a much more equitable basis of rating for residential premises would be one levied as a percentage of the total net income of all the inhabitants thereof. Possibly a drastic revision of the Equalization Grant provisions of the Local Government Act, 1948, would be necessitated. But if greater justice were thereby done and the incessant, nauseating cry, mostly without any justification, were abolished, it would be a correct move.

Far indeed, from securing fairness is the adopting of 1938 site values for council houses from 1952 onward and 1949 site values for other houses. Rather would it seem to be a method of applying the parable of the sower : " For he that hath, to him shall be given : and he that hath not, from him shall be taken even that which he hath," since numbers of municipal properties are already heavily subsidized in rents and soon they are, apparently, to be favoured in rates.

The implication of the Minister of Health may be that there should be stabilization of rates, not only within an area, but generally, over the country. If so, the legal aspect of the matter must not be overlooked. The risk of making a rate which could be quashed should be avoided. A few years ago the Cardiff Corporation had to defend its action in this respect before the Recorder at that City's Sessions. While the decision was satisfactory to the council, the judgment provided information of much value—a lesson to all concerned in the making of local rates and especially so when and where the question of stabilization is contemplated.

The case named challenged the legality of including in a rate made a figure which might be regarded as being in excess of estimated requirements during the period of the rate. It was alleged that there had been included more than would be needed, the excess being, in reality, included to create a reserve fund which could be used to avoid fluctuations in future rates. If that had been the object, the rate could have been declared bad and not enforceable. The rating authority succeeded in proving that the supposed excess was for use as a working balance and, as such, specifically covered by s. 12 of the Rating and Valuation Act, 1925.

Another point of a legal character is that a local authority cannot bind its successors in matters of policy and so schemes of stabilization and equalization are themselves *ultra vires* and could be departed from by subsequent assemblies. This aspect may, perhaps, aptly be alluded to as "unlegal" as distinct from illegal.

The avowed object of stabilization is to offer some security to business houses that they may make plans ahead in the certain knowledge that their rate liability will be a pre-determined and known figure. While an equalized rate may be acceptable to the trader, the householder may regard it quite differently. He is apt to think that the ratepayers of each period should pay for what they receive, rather than for benefits of ratepayers of a past or future period. They are certainly supported by the legal view on the question. The accumulation of balances, whether large or small, openly or surreptitiously for the purpose of equalizing rates is wrong, both legally and morally.

If stabilization can, by any means, be justified, an essential factor in any such scheme is stabilization of valuation. This will be effected in large measure through the provisions of the Local Government Act, 1948, in the transfer of valuation work to the Inland Revenue Authorities accompanied by directions for appraisal by rule of thumb methods—"calculation," rather than "valuation" would be a better description of the task.

Estimating requirements on sound lines is another essential in stabilization. This should include capital estimates. Some authorities levy yearly rates, some half-yearly rates. The former is a valid form of stabilization for a year. And so, if a longer period than a year were taken as the period of a rate, that would be a means of legally stabilizing the rate for an even longer period according to the term of the rate. Capital estimates are a necessity in any scheme of stabilization over a number of years. A full account of capital commitments and projects must be reviewed to ascertain how much expenditure of a capital nature, whether in the form of direct defrayment out of the rate or indirectly as loan charges, should be included in the rate estimates over the whole period of stabilization. Debt charges and revenue contributions to capital outlay can absorb a large part of rates levied.

There is a difference between stabilized and rationed rates. The latter need deal with one period only and essentially involve a reduction or avoidance of an increase in the amount called for in the periodical estimates for rates, yet may be either in excess of or lower than the actual rate levied for the previous period and for subsequent periods.

Though there is no statutory limitation on the amount which a local authority may raise by rate as a whole, rationing or limiting for specific purposes has been directed by public general Acts, many of which are still operative. These are as follows:

Purpose.	*Limit of Rate*	*Local Authority concerned.*
Allotments	1½*d.*	County Councils and County Boroughs.
Advertising health, etc., resorts	3*d.*	Authorities which adopt the Act.
Bands and entertainments in parks	1½ to 2½*d.*	Authorities which adopt the Act.
Burial grounds	4*d.*	Parish Councils only.
Adoptive Acts (expenditure)	4*d.*	Parish Meetings with Parish Councils.
General expenses (other than under Adoptive Acts)	4*d.*	Parish Councils.
Ditto	8*d.*	Parish Councils with consent of Parish Meeting.
Voluntary hospitals (subscriptions)	1½*d.*	County, County Borough, Non-County Borough and Urban District Councils.
Museums and gymnasiums	½*d.*	Adopting Authorities.
Public improvements	8*d.*	Parish Councils.
Spreading information abroad as to amenities of the British Isles	½*d.*	County Borough, Non-Metropolitan Borough and Urban District Councils.
War memorials (maintenance)	1½*d.*	Parish Councils.
Ditto	fixed by M. of H.	Other than Parish Councils.
Entertainments	6*d.*	County, Borough and Urban District Councils.
Land settlement	1½*d.*	County and County Borough Councils.
River protection	4*d.* (increasable)	County, Borough and District Councils.
Coast protection	1*d.*	County Councils.

RATIONED RATES

The principle of rationing in regard to the rate is worthy of consideration but it has to be remembered that the council of one year cannot bind its successors in office in this matter. The successors can, of course, respect the idea and continue it.

A rationed rate is an auxiliary to economy especially in abnormal times. The principle is introduced when a council decides to levy a rate of so much in the £ and to cut (if necessary) their service and services to make the proceeds of such a rate suffice. The figure may be the same each year or, of course, may be varied year by year. Obviously, if the scheme is to be fully successful, the goodwill and co-operation of all departments and committees of the council are essential. By such means each uses its allotted portion to the best advantage.

One effect of rationing in this way is to relieve the finance committee of much of its duty of pruning the financial proposals of other committees since each spending committee is required itself to effect such economies, make such criticism, and to reduce, and if necessary, defer, expenditure in order to keep within its "ration."

The principle involved in rate rationing is that of cutting one's coat according to one's cloth—that public expenditure should be regulated by the amount of income available in the same way that applies in all other spheres. Clearly there is much sound common sense in the principle.

Where the finance committee, with the aid of its chief financial officer, is particularly concerned in this is in the two following important respects:

1. In ensuring that the amount of money allotted to each committee is the maximum at its disposal, not a figure which *must* be spent; and
2. In seeing that expenditure is on essentials rather than on things fancied by those in authority, which could easily happen in the absence of close supervision.

The introduction and operation of a rationing scheme is considered by many to induce a council to weigh financial considerations against those of general or particular policy with greater advantage to the public than does a haphazard financial criticism of individual items.

LONG-TERM RATES AN ALTERNATIVE TO STABILIZATION

A long-term rate is a method of effecting stabilization in a measure, limited by the period for which the rate is made. Seldom, if ever, does one find a rate for a longer period than a year, but a rate for, say, three or five years, payable by instalments, of course, over that term and so not inflicting any greater hardship on the ratepayers than would a short-term impost, would be a scheme of stabilization and equalization. While one may not have heard of long-term rates having been made with this object in view, if it is legally possible, one may yet hear of a pioneer authority in these days of progress.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Somervell, Cohen and Denning, L.JJ.)

November 3, 27, 1950

MAGOR AND ST. MELLONS R.D.C. v. NEWPORT CORPORATION

Local Government—Alteration of areas—Adjustment of property, etc. —Payment for increase of burden—Two rural councils losing profitable areas to borough council—Rural councils amalgamated immediately thereafter into one new rural council—Right of new Council to financial adjustment—Amount of payment for increase of burden—Local Government Act, 1933 (23 & 24 *Geo. 5, c.* 51), *sch. V, r.* 1; *Local Government Act*, 1888 (51 & 52 *Vict., c.* 41), *s.* 100.

APPEAL by the rural district council and cross-appeal by the borough council.

By s. 4 of the Newport Extension Act, 1934, the boundary of the county borough of Newport was enlarged so as to include part of the area of the rural district of Magor and part of the area of the rural district of St. Mellons. Immediately after the coming into force of the Act on April 1, 1935, the County of Monmouth Review Order, 1935, made by the Minister of Health under s. 46 of the Local Government Act, 1929, came into operation, whereby the two rural districts were abolished and a new rural district, called Magor and St. Mellons rural district, came into being. The new rural district was formed out of the areas of the two former rural districts except such parts as were transferred to the county borough of Newport by the Act of 1934 and to the new urban district of Pontypool by the Minister's Order. Under art. 53 of the Order all property and liabilities of the two dissolved rural district councils were to be transferred to the new rural district council, " property " having the same meaning as in the Local Government Act, 1888. Section 100 of that Act defined " property " as including " all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action . . . " By s. 152 (1) (*b*) of the Local Government Act, 1933 (which, by s. 58 of the Newport Extension Act, 1934, was to apply to the alteration of areas made by that Act) provision is to be made on an adjustment of property between local authorities on an alteration of boundaries for a payment by one authority to the other for any increase of burden imposed on the ratepayers of that other by reason of the alteration of boundaries. Schedule V to the Act of 1933 sets out rules for determining the amount of the payment. By r. 1 regard is to be had to " (*a*) the difference between the burden on the ratepayers which will properly be incurred by the local authority in meeting the cost of executing any of their functions and the burden on the ratepayers which would properly have been incurred by the local authority in meeting such cost had no alteration of boundaries or other change taken place; (*b*) the length of time during which the increase of burden may be expected to continue . . . "

A claim by the new rural district council against the borough council for a financial adjustment was referred to arbitration, and the arbitrator stated a Case for the opinion of the court on the following questions: (i) whether the new rural council was entitled to claim a financial adjustment; (ii) whether, if the answer to question (i) were Yes, a claim for increase of burden could lawfully be made by the new rural council; (iii) if the answer to questions (i) and (ii) were in the affirmative, how r. 1 of sch. V to the Act of 1933 was to be interpreted in relation to the present case. PARKER, J., gave the answer to question (i) as Yes, and that to question (ii) as No, so question (iii) did not arise. The rural district council appealed against the answer to question (ii) and the borough council cross-appealed against the answer to question (i).

Held: (i) the right to a financial adjustment was " property " within the meaning of s. 100 of the Local Government Act, 1883, and, accordingly, the right thereto formerly vested in the two rural district councils passed to the new council by virtue of art. 53 of the County of Monmouth Review Order, 1935.

(ii) (DENNING, L.J., *dissentiente*) the increase of burden on the two former rural district councils endured only for a moment of time, since the Order of 1935 dissolved them the moment after the alterations of boundaries took place, and, therefore, the amount of the payment to which they were entitled in respect of increase of burden was *nil*. The new council did no more than succeed to the rights of the old councils, and could have no greater rights than those of the old councils, and so the amount of its claim was *nil* also.

Appeal and cross-appeal dismissed.

Counsel: *Simes, K.C.*, and *Scholefield* for the rural district council; *H. B. Williams, K.C.*, and *Stewart-Brown* for the borough council.

Solicitors: *Torr & Co.*, agents for *Wade & Son*, Newport, Mon.; *Rees & Freres*, agents for *Town Clerk*, Newport.

(Reported by C. N. Beattie, Esq., *Barrister-at-Law*.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Parker, JJ.)

November 27, 1950

R. v. PARRY AND OTHERS

Criminal Law—Sentence—Probation order—Power also to fine defendant—Order—Criminal Justice Act, 1948 (11 & 12 *Geo. 6, c.* 58), *s.* 3 (1), *s.* 13.

APPEALS against sentence.

The appellants were convicted at Leicester City Quarter Sessions of storebreaking and larceny and in the case of each the recorder made a probation order for two years and imposed a fine of £25. By s. 3 (1) of the Criminal Justice Act, 1948: " Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order . . . " By s. 13: " Any court before which an offender is convicted on indictment of felony (not being a felony the sentence for which is fixed by law) shall have power to fine the offender in lieu of or in addition to dealing with him in any other manner in which the court has power to deal with him."

Held, that, having regard to the terms of s. 3 and the following sections which deal with probation, the concluding words of s. 13 did not empower a court to combine a fine with a probation order. A payment of a sum of money, where a probation order was made, could not be ordered by way of punishment, but only by way of compensation under s. 11 (2). The sentences would be varied by setting aside the probation orders and ordering that the fines should stand, with a penalty in each case of three months' imprisonment in default of payment.

Counsel: *Guy Dixon* for the appellant; *Stimson* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal*; *Town Clerk*, Leicester.

(Reported by T. R. Fitzwalter Butler, Esq., *Barrister-at-Law*.)

R. v. FRANKS

Customs—Indictment—Defect—Importing prohibited goods—Intent to evade prohibition not alleged—Conviction quashed—Customs Consolidation Act, 1876 (39 & 40 *Vict., c.* 36), *s.* 186.

APPEAL against conviction.

The appellant was convicted at Southampton Borough Quarter Sessions of being concerned in importing prohibited goods, contrary to s. 186 of the Customs Consolidation Act, 1876. The count charging the offence did not allege an intent to evade the prohibition imposed. The appellant was fined £25 and ordered to pay £42 costs. He appealed on various grounds, but on the hearing of the appeal counsel for the Crown conceded that, in view of the decision in *Frailey* v. *Charlton* (83 J.P. 249; [1920] 1 K.B. 147), the indictment must be regarded as defective by reason of the fact that the intent mentioned was not charged.

Held, that the conviction must be quashed on that ground.

Counsel: *Flowers, K.C.*, and *Alan Fletcher* for the appellant; *J. T. Molony* for the Crown.

Solicitors: *Langhams & Letts* for *Niedermayer & Dalton*, Eastbourne; *Solicitor for Customs and Excise*.

(Reported by T. R. Fitzwalter Butler, Esq., *Barrister-at-Law*.)

December 5, 1950

R. v. GRANT

Criminal Law—Committal for sentence—Notice of previous conviction —Date when service required—Criminal Justice Act, 1948 (11 & 12 *Geo. 6, c.* 58), *s.* 23 (1), *s.* 29 (1).

APPEAL against sentence.

On August 3, 1950, the appellant pleaded Guilty before a court of summary jurisdiction to two charges of larceny, and, under s. 29 (1) of the Criminal Justice Act, 1948, was committed to Wiltshire Quarter Sessions for sentence. On the same date a notice under s. 23 (1) of the Act setting out two previous convictions on which the prosecution intended to rely as rendering the appellant liable to be sentenced to corrective training was served on the appellant. On August 30, 1950, he was sentenced by the appeal committee of quarter sessions to two years' corrective training. The appellant contended that the notice had not been served on him in accordance with s. 23 (1) in that it

had not been served on him three days before his appearance at the magistrates' court. By s. 23 (1) of the Act of 1948: "For the purpose of determining whether an offender is liable to be sentenced to corrective training . . . no account shall be taken of any previous conviction or sentence unless notice has been given to the offender . . . at least three days before the trial that it is intended to prove the conviction or sentence . . ."

Held, that once an offender had been committed under s. 29 to quarter sessions for sentence, he was to be treated in all respects as if he were being sent there for trial. In such a case, therefore, a notice under s. 23 (1) of the Act could be served at any time up to three days before the offender appeared before quarter sessions for sentence. In the circumstances of this particular case, a sentence of two years' imprisonment would be substituted for the sentence passed.

Counsel: *Huntley* for the appellant; *Eric Mills* for the Crown.

Solicitors: *Registrar*, Court of Criminal Appeal; *Tarry, Sherlock & King* for *Townsends*, Swindon.

(Reported by T. R. Fitzwalter Butler, Esq., *Barrister-at-Law*.)

(Before Lord Goddard, C.J., Byrne and Parker, JJ.)

November 21, 1950

R. *v.* FAITHFUL: PRACTICE NOTE

Criminal Law—Committal for sentence—Duty of quarter sessions—Criminal Justice Act, 1948 (11 & 12 *Geo. 6, c.* 58), *s.* 29 (1).

THE COURT, in refusing this application, said that such appeal committees as those of the County of London, Middlesex Sessions, and certain quarter sessions in the north of England, which sat frequently, should satisfy themselves, before passing sentence in the case of a person committed for sentence under s. 29 (1) of the Criminal Justice Act, 1948, that no notice of appeal against the conviction by the justices had been given and that the time for appealing had expired. In the case of appeal committees which did not sit so frequently, in a case in which the time for appealing had not already expired, it should be ascertained, before sentence was passed, that the person committed for sentence did not intend to appeal against his conviction in the justices' court.

(Reported by T. R. Fitzwalter Butler, Esq., *Barrister-at-Law*.)

REVIEWS

Van Oss and Macdermot on The Lands Tribunal. Jurisdiction, Law, Procedure. Supplement. By Niall Macdermot. London: Butterworth & Co. (Publishers) Ltd. Price 5s. net.

It is only a few months since we reviewed the work by Messrs. Van Oss and Macdermot which described the law and procedure of the Lands Tribunal, a new-comer in the jurisdictional field, about which there is at present everything to learn. The need for issuing so soon a supplement to the main work (which stands alone in giving the necessary information to the practitioner) arises from the issue of new Rules of Court, and of an Order in Council transferring further functions to the Lands Tribunal. There have been also some minor changes in law and practice, since the main work appeared. The supplement comprises a noter-up on the now familiar lines, bringing the main work page by page up to date as at August, 1950, followed by the text of the subordinate legislation above mentioned, and some extracts from statutes which make these provisions comprehensible. The last named is a welcome feature, in that it saves persons using the supplement from having to refer back to earlier statutes. The main work is still procurable at a price of 37*s.* 6*d.* net, for this and the supplement together. We imagine that prudent persons, who have to do with the matters which may come before the Lands Tribunal, several of which are of urgent importance to our own readers, will have already obtained the main work. If so, they should obtain the supplement as well. If they have not yet obtained the main work they should lose no time, for—with the bringing into force of new items of jurisdiction—it seems likely that Lands Tribunal practice will soon become a good deal more important than practice before some of the longer constituted bodies.

The Trial of Peter Griffiths (Notable British Trial Series, Vol. 73). Edited by George Godwin. Edinburgh and London: William Hodge & Co., Ltd. Price 15s.

On the night of May 14-15, 1948, a little child not quite four years of age was taken from her bed in Queen's Park Hospital, Blackburn, ravished and then savagely murdered. On the night of August 11, 1948, Peter Griffiths, aged twenty-two, was arrested for this crime and was subsequently tried, found guilty and sentenced to death. This book sets out the details of the crime, of the investigations leading eventually to the arrest of Griffiths and of the subsequent trial. There are features of special interest in the case. In the first instance there was the elaborate inquiry by the police involving the taking of the finger-prints of every male over sixteen in the town of Blackburn. There was close collaboration between the local police and those from Scotland Yard, and eventually a fingerprint was found corresponding to that on a bottle in the hospital from which the child had been taken, and the long search was at an end. Further scientific investigation was concerned with the material from a pair of woollen socks, and with footprints in the hospital ward. The book gives clear and interesting details of these. The editor is also concerned to explain the difference in the legal and the medical considerations involved when the defence is raised, as in this case, that by reason of a disease of the mind the accused ought not to be held criminally responsible for his actions. There was considerable evidence that Griffiths was a schizophrenic, and it was said that his father had been similarly afflicted. The jury heard all the relevant evidence and came to the conclusion that Griffiths, when he committed these dreadful acts, not only knew what he was doing but knew also that what he was doing was wrong. The editor's view is indicated by his assertion, on p. 28, "ten years hence on the same or comparable evidence the verdict would be 'guilty but insane'." He emphasizes the difficulty facing the defence in such a case when he says "the expert medical witness who endeavours to interpret such mental and emotional abnormal states does not speak the same language as the judge and jury." It is a subject of special concern to the medico-legal world and this book gives ample food for thought. Readers will find the appendix by C. Stanford Read, M.D., consulting psychiatrist to the West End Hospital for nervous diseases, of considerable assistance as a contribution to the discussion. His subject is "Schizophrenia and other mental disorders of medico-legal import."

The Velpke Baby Home Trial: War Crimes Trials Vol. VII. Edited by George Brand, LL.B. Edinburgh: William Hodge & Co., Ltd. Price 18s.

These volumes are of particular interest to the student of international law in its broadest sense. National systems of law vary considerably and any attempt to deal, as was done after the recent war, with those who in the course of it had been guilty of crimes against humanity is bound to produce innumerable difficulties. There were those who argued that attempts to "try" the accused as the word is understood in our criminal courts would be a fiasco tending to bring the law into disrepute. This volume shows clearly how one such attempt was made, and the fact that of the eight accused three were found not guilty and only four were convicted and sentenced (the eighth died in the course of the proceedings) goes some way to answering the critics. The proceedings were held in the British zone before a British military court for the trial of war criminals, and began on March 20, 1946. In May, 1944, a so-called children's home was established at Velpke to take in babies born to Polish and other non-German women who had been brought from German-occupied territory to work in Germany to assist the German war effort. Between May and December, 1944, ninety-six of these infants died, and the eight accused were charged with being concerned in killing them by wilful neglect. Of the four found guilty two were condemned to death and were hung, one was sentenced to fifteen and another to ten years' imprisonment.

The accused were represented by counsel and every opportunity was given them of cross-examining the witnesses for the prosecution and of putting their own case. Owing to the lapse of time and to the movement away of certain witnesses documentary evidence was admitted in a way which would not happen in a criminal trial here. The whole course of the proceedings is fully described and the reader can form his own opinion as to the way in which they were conducted. The introduction is a little discursive. There are a few remarks about the Law Reports of the United Nations War Crimes Commission, an outline of "the wider historical background of the tragic events at Velpke," a description of the trial, with a summary of the evidence, an examination of various legal issues raised, the substance of the charge made against the accused and the defences put forward by them. Finally there is a discussion on the right to a fair trial in such circumstances as were involved in these war crime trials. In an appendix are included the regulations for the trial of war criminals which governed the trial.

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CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

STATUTORY INSTRUMENTS FIXING THE DATE OF COMMENCEMENT OF ACTS OF PARLIAMENT

Certain Acts of Parliament are brought into force by means of a Statutory Instrument which sets forth the date from which an Act already passed by Parliament shall operate. Hitherto such Instruments have been listed in common with other Statutory Instruments in the daily list issued by this department but special attention has not been drawn to them. In future such orders will have the letter "C" inserted following the Registration number thus S.I. 1951 No. 517 (C.xx) and they will appear separately at the head of the Statutory Instrument list under the following heading:

STATUTORY INSTRUMENT ISSUE LIST
Commencement Orders (bringing an Act or part of an Act into operation).

The object of this change of procedure is to bring these instruments to the notice of the interested public. It should be noted that, owing to the "Commencement" classification having been introduced late in the year 1950, when several Commencement Orders had already been published, it has been decided, in order to avoid confusion, to commence serial numbering in the C series with the first Commencement Order for the year 1951. Meanwhile, however, the letter C will be printed in brackets following the Statutory Instrument number.

Yours faithfully,
T. C. D. EVANS,
Director of Publications.

His Majesty's Stationery Office,
429, Oxford Street,
London, W.1.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I have read with interest your answer to P.P. 8 on p. 609.

As A was serving in a police force on August 28, 1921, and assuming he has not elected by notice that the proviso shall not apply to him, is he not covered by the proviso to regulation 50 (1) of the Police Pensions Regulations, 1949? If you agree, his case appears to be covered by s. 29 (1) (*b*) of Police Pensions Act, 1921, and he can by right continue to serve until he is eligible for a pension of two-thirds of his pay, even although this causes him to exceed the maximum retiring age of 55 years. If he then wished to continue to serve, after he had become eligible for a pension of two-thirds pay, regulation 50 (2) of the Police Pensions Regulations, 1949, would apply.

Yours faithfully,
P. WALKER,
Chief Inspector,
Warrington Borough Police.

[We agree.—*Ed., J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

The Kent combined probation committee has appointed Mr. Albert Edward Bray to be senior probation officer for the Faversham and Sittingbourne petty sessional divisions and the borough of Faversham with effect on December 1, 1950.

Mr. Bray, who is forty-nine years of age, has been the probation officer in charge of the borough of Margate and the Thanet division of the Liberties of the Cinque Ports since 1937. He served in the Royal Engineers from 1919 to 1937.

Mr. Hugh Leslie, a probation officer at Becontree magistrates' court since 1940, has been appointed senior probation officer for the county borough of Middlesbrough. Mr. Leslie served in the army during the war.

OBITUARY

Mr. David Bowen, K.C., died on November 27 at Richmond, at the age of sixty-five. He was called to the Bar in 1920. He wrote a number of textbooks including *Mines and Quarries Acts* and *Law Relating to Fixtures, Vendors and Purchasers*, and *The Coal Acts*. He was also responsible for the section on mines, minerals and quarries in the Hailsham edition of *Halsbury's Laws of England*.

THE WEEK IN PARLIAMENT

From Our Special Correspondent

With the approach of the Christmas Recess and the tension of the external political situation, the House of Commons last week was a scene of unusual calm. Even question-time failed to provide any highlights and, with one exception, the business transacted can be described as "minor and routine."

The exception was the Bill to "freeze" certain leases for a period of two years, which was promised in the King's Speech and received a second reading without a division.

The Bill is entitled the Leasehold Property (Temporary Provisions) Bill, and Part 1, which deals with dwellings, protects occupying lessees under long leases which are due to expire during the period of two years from the commencement of the Act or under expired long leases where the lessee is holding over at the commencement of the Act. It also protects occupying sub-tenants (under shorter tenancies) of lessees under long leases. A long lease for the purpose of this Bill is a lease (including an under-lease) granted for a term exceeding twenty-one years.

Where the lessee or a member of his family is living in the premises when a long lease comes to an end, cl. 1 continues the lease for the rest of the two years on the same terms and conditions including rent. Clause 2 gives similar protection where a long lease has already ended before the commencement but the lessee or a member of his family has since the end of the lease been living in the premises.

A lessee who does not wish to avail himself of the protection of the Bill, or wishes to terminate a lease extended by the Bill before the end of the two years, can do so by giving notice to his landlord. Clause 4 protects the lessee throughout the two-year period against forfeiture, except for non-payment of rent or failure to insure; actions for damages for breach of covenant are postponed till the lease comes to an end. Schedule 2 to the Bill provides relief for intermediate lessees who will thus be prevented from enforcing covenants against underlessees.

Where a sub-tenant is in occupation when a long lease comes to an end within the two-year period, cl. 5 preserves for him as against a superior landlord any protection he enjoyed against his immediate landlord during the currency of the long lease. This clause also covers the case where the sub-tenant has been holding over since before the commencement of the Act.

Under Part II of the Bill, which deals with shops, the tenant of a shop (including "mixed premises," *i.e.*, living accommodation and shop) in England and Wales may apply to the county court for renewal if his lease comes to end within two years of the passing of the Act.

The court is empowered, on such application, to grant a new tenancy for a term not exceeding one year at a time, at such rent and on such other terms as the court may consider reasonable. The application must be made at least one month before the expiry of the lease or within one month of receipt of notice to quit. In the case of mixed premises, the court may grant renewal for the shop part only if it so decides.

The court may not grant a new tenancy if it is satisfied that:
(*a*) the tenant has broken any of the terms or conditions of the expiring tenancy; (*b*) the landlord requires possession for demolition or reconstruction; (*c*) greater hardship would be caused by granting the renewal than by refusing it; (*d*) the landlord has offered the tenant reasonable alternative accommodation; or (*e*) that, where a public authority has an interest in the premises, renewal would not be in the public interest.

There can be no appeal against the decision of the court.

The Attorney-General, Sir Hartley Shawcross, who moved the Second Reading, told the Commons that the Government was working on permanent legislation to replace the Bill at the end of the two-year period.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, December 5.

SUPERANNUATION BILL, read 3a.

HOUSE OF COMMONS

Monday, December 4.

REINSTATEMENT IN CIVIL EMPLOYMENT BILL, read 3a.

Wednesday, December 6.

LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) BILL, read 2a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Supervision order—Care or protection case—Girl absconds when over seventeen—What steps can be taken?*

A is a girl who will be eighteen in December next. Whilst a young person she was brought before a juvenile court as being in need of care and protection and a supervision order was made for three years expiring in 1952.

A has now absconded.

1. Can the court issue a warrant for A's arrest and on what authority? Part II of the Summary Jurisdiction (Children and Young Persons) Rules, 1933, apply to "a young person dealt with in pursuance of ss. 61-64 of the Children and Young Persons Act, 1933," and A was so dealt with, and s. 16 (2) of these rules authorizes the issue of a warrant, but this section states that "the warrant shall direct that the child or young person shall be brought before a juvenile court." A is no longer a young person.

2. Should A when apprehended be brought before a juvenile court?

3. Must the supervising officer apply to the juvenile court for an amendment of the supervision order under the Children and Young Persons Act, 1938, s. 4 (2), as amended by the Criminal Justice Act, 1948, sch. 9, and if so, for what amendment is it suggested the supervising officer could apply, seeing that the powers of the court under the Children and Young Persons Act, 1933, s. 62, are limited to children and young persons?

What other action can: (*a*) the supervising officer, (*b*) the court (juvenile or adult) take?

Your advice on the above points will be appreciated. JOP.

Answer.

1. No. Rule 16 applies only to proceedings under the sections enumerated in r. 14.

2 and 3. *See* 1.

If the supervisor has grounds for applying for a condition of residence to be put into the supervision order and, without process from the court, can find the girl, the girl can be taken before the juvenile court. (*See* s. 4 (2) of the 1938 Act as substituted.) The court could insert such a condition only with the girl's consent and it would cease to have effect when the girl became eighteen. (Section 74, Criminal Justice Act, 1948, and sch. 1.)

2.—Criminal Law—*Barrator—Common informer.*

Members of a well-known society have recently been active in this district suppressing activities which are illegally held on Sundays. One particular member, indeed, gained considerable notoriety in the press from the fact that his income is mainly derived from informing for prosecutions and the suppression of certain Sunday entertainments. I would welcome your authoritative opinion as to whether the society, or the particular member referred to, could be charged with the misdemeanour of "being a common barrator." *Stephen's Digest* (7th ed., p. 146) and *Stone's Justices' Manual* do not materially assist me; the law on this matter seems wrapped in antiquity.

AGIT.

Answer.

We agree that the exact nature of a barrator's offence is to be sought in old authorities. The essence is that a man habitually starts unjustified legal proceedings. Since the man you speak of is making a good thing out of the penalties, he is evidently succeeding in the proceedings he brings. In other words, those proceedings are not, in law, unjustified. The common informer is not nowadays regarded as an estimable figure, but Parliament, by enacting the statutes which he enforces, called him deliberately into existence, and so long as Parliament retains those statutes we cannot advise that he is a barrator, or that a society existing for the purpose of enforcing the law commits an offence in doing so by methods which Parliament established.

3.—Husband and Wife—*Arrears—Certificate by collecting officer—Subsequent payments by husband—Correct appropriation of these payments.*

"I am dealing with a case remitted to me from another division under the Emergency Laws (M.P.) Act, 1947, and a point has arisen with regard to issuing certificates for amounts paid by the defendant to the home court.

In this particular case arrears accrued to a sum of £32 16*s.* when the order was reduced to £2 10*s.* per week and since the reduction in the amount of the order the defendant has paid regularly the sum of £2 10*s.* The clerk of the home court has remitted to me a complaint in respect of the sum of £32 16*s.* on which I have issued a summons, but I requested the clerk of the home court to let me have a certificate each time he received a remittance from the defendant. The clerk of the home court maintains that the arrears of £32 16*s.* are in effect "frozen" and the defendant can be committed to prison in default of payment of this sum, notwithstanding that he remits regularly the current amount under the order of £2 10*s.* per week.

In my view the rule in *Clayton's* case [*Devaynes* v. *Noble, Clayton's Case* (1816) 1 Mer. 529, 572] applies to these arrears, for example, in the case in question, if the justices for this division made a committal order in respect of £32 16*s.* suspended on payment of the current order, plus 5*s.* per week, the defendant would be entitled to elect that each weekly payment of £2 15*s.* should be set off against the arrears for which he stood committed. Granted, whilst this practice continued the current weekly order would be accumulating, but I have always adopted the practice, when a person stood committed in respect of a sum of arrears, of not debiting any weekly amounts in the collecting officer ledger for that order until the total arrears had been cleared.

I should be glad of your views on this point. JOC.

Answer.

Money paid by debtors, without specifically appropriating it, is to be applied in discharge of their oldest debts [*Toulman* v. *Copland* (1834) 2 C. and Fin. 681]. On this authority we think that payments made after the certificate is given must be credited to payment of the arrears until these are cleared, unless the husband specifically appropriates them to payment of the current order, which appears to be an unlikely thing for him to do.

4.—Husband and Wife—*Procedure—Summons to discharge—Right of reply by complainant after defendant's evidence—Witnesses out of court—Right to copy of clerk's notes of previous proceedings.*

I should be much obliged if you could advise me on the following points which recently arose in connexion with an application to discharge a maintenance order made on the ground of wilful neglect to maintain a wife. The summons to discharge the order was made on the ground of the wife's unreasonable refusal to return to her husband after a genuine offer by him to support her in his home.

1. Has the solicitor for the complainant husband the right of reply at the end of the respondent's case?

2. Must the husband's witnesses be out of court until called to give evidence?

3. Is a copy of the record of the hearing of the earlier summons on which the order was granted (*i.e.*, the clerk's notes) obtainable on payment as a matter of course, or can the clerk refuse to supply a copy? JIT.

Answer.

1. This is governed by the Summary Jurisdiction Act, 1848, s. 14. The complainant may not address the court on the defendant's evidence, but he may call witnesses in reply to the defendant's evidence.

On a point of law raised by either party the other party is always allowed to reply.

2. There is no rule of law about this, but it is the general practice for witnesses to be asked to remain out of court till they have given evidence. The reason for this is obvious. For a witness to be in court before giving evidence does not make his evidence inadmissible, but may well detract from its value.

3. The clerk in such cases is required to take a note for the purposes of any appeal and is bound in the case of an appeal to supply copies (*see Sullivan* v. *Sullivan* [1947] P. 50 and many earlier cases). We know of no legal obligation to supply copies for the purposes of the fresh case in the magistrates' court, but we think that is unreasonable to refuse to supply them on payment. (*See also* 106 J.P.N. 142.)

5.—Landlord and Tenant—*Furnished Houses (Rent Control) Act, 1946—Landlord and Tenant (Rent Control) Act, 1949.*

Under s. 11 (1) of the Landlord and Tenant (Rent Control) Act, 1949, a lessee may make an application to the rent tribunal when a notice to quit has been served for an extension as provided by that section. Under the Acts a local authority may make a reference to the rent tribunal (s. 5 of the Act of 1946). The point now arises whether a local authority has power to make an application, in ad-

dition to a reference, to the tribunal, in the same manner as a lessee may, for an extension. A.H.B.C.

Answer.

No. Section 11 of the Act of 1949 confers the right of applying thereunder upon the lessee alone.

6.—Landlord and Tenant—*Rent book not supplied—Summary proceedings—Effect on tenant's liability.*

A was the owner of a cottage let to B on a weekly tenancy. A died in 1948 and at that time B owed some arrears of rent. After A's death his executors applied the rent which they collected towards clearing off the arrears which had accrued in A's lifetime. A had not supplied a rent book to the tenant, and the executors did not supply a rent book until their attention was called to the necessity for doing so in November, 1949. The executors are proposing to sue B for the balance of the arrears of rent which accrued during the lifetime of A. B's solicitors are threatening proceedings under s. 6 (2) of the Increase of Rent (Restrictions) Act, 1938. In view of the fact that upwards of six months' have elapsed since the executors provided a rent book, are they now exempt from any liability under that section if they continue to apply the rent which they collected towards the arrears, in spite of the fact that such arrears accrued during the time that no rent book had been supplied? ABS.

Answer.

Section 6 of the Act of 1938 creates a duty and a summary offence. Failure in that duty does not invalidate the contract, or disentitle the lessor to recover. In the case before us, the executors cannot now be prosecuted under s. 6; their advisers will, no doubt, make sure that they have not inadvertently committed any other of the tricky rent book offences, *e.g.*, omitted the amount of rates or the name of the medical officer of health. Subject to this, B's threat can be ignored.

7.—Local Government Act, 1933—*District council—Treasurer.*

Is an official of a district council who holds the title "chief financial officer" and as such is responsible for receiving moneys on behalf of the council, including therein the collection of rates, rents of council houses, allotment rents, subscriptions under the Small Dwellings Acquisition Acts, etc., "the treasurer" of the council for the purpose of s. 107 of the Local Government Act, 1933? ACCOUNT

Answer.

Not necessarily. The treasurer *eo nomine* holds a statutory office to which he must be specifically appointed. Local authorities (at any rate the councils of districts: there might be technical difficulties about such an appointment in a county) have not infrequently appointed a bank manager, or even a banking company, to the statutory office, and in that case the non-statutory title of "chief financial officer" would naturally enough be given to their chief accountant.

8.—Lunacy—*Management of property—Power of attorney executed in anticipation.*

A client of ours, who is in business on her own account, was appointed receiver of her late mother's estate by an order of the Court of Protection. Her mother having recently died whilst in a mental home, our client is concerned over the possibility of inheriting her mother's insanity, and desires to provide for such an eventuality by executing a power of attorney in favour of her son, to take effect only in the event of her becoming mentally unsound, to enable her son to attend to her affairs.

Would you please advise whether:

1. Such a power of attorney could now be executed, embodying in its contents the condition that such power was only to take effect in the event of the principal's insanity without usurping the powers of the Court of Protection.

2. Whether, in the event of the principal's insanity, a receiver would need to be appointed by the Court of Protection, notwithstanding the existence of the power of attorney.

3. Whether the power should be dated, executed, stamped, and filed at the central office.

4. In the event of the power of attorney requiring to take effect now, whether any act of the principal would revoke such power, or whether the giving of such power under the circumstances would divest the principal of her powers. ATT.

Answer.

On the subject of an attorney's position when his principal becomes insane, we are not sure that the law is more satisfactory now than when Brett, L.J., criticised it in *Drew* v. *Nunn* (1879) 4 Q.B.D. 661. In the later case of *Daily Telegraph Newspaper Co.* v. *M'Laughlin* [1904] A.C. 776, the principal was already insane when the power was given, so that that case is no authority for the proposition, stated in some text-books, that a power of attorney is automatically revoked when the principal becomes insane. *Drew* v. *Nunn, supra*, is authority for that proposition, in general, subject to savings on the ground there explained for persons dealing *bona fide* with the attorney. We suggest you should consider that case, but looking to its facts, not the same as those before us, and to what was said by Cotton, L.J., we are inclined to the opinion that a power of attorney, given by a sane person for the express purpose of dealing with the principal's affairs in the event of his future insanity, is not rendered void by his insanity. Upon this view of the law, a deed can be validly executed now, conditioned to take effect upon the future event. You will no doubt advise your client that the deed will not over-ride the statutory powers of the master (now Court of Protection), but the son's power to act may be useful in daily affairs, pending consideration by the Court.

2. We think the Court would lean in favour of your client's wishes if satisfied that the son was a suitable person to become committee or receiver, though the mother's interest will be the paramount consideration. The Court is not bound to appoint a receiver.

3. Yes.

4. See above as to framing the power of attorney conditionally. It will be revocable so long as the mother is *compos mentis*.

9.—Public Health (London) Act, 1936, s. 82—*Housing Acts*, 1936-1949—*Compulsory purchase—Unfit property.*

My council has recently made and obtained confirmation of a compulsory purchase order for the provision of housing accommodation under the Housing Act, 1936, in respect of certain properties within the borough, and notices to treat were served in October, 1949, upon the various persons interested in the respective properties. Negotiations are in progress for the settlement of compensation due to the owners, but one occupied dwelling-house included within the order, in respect of which negotiations are still proceeding, is in the opinion of the council in such a state as to be a nuisance or injurious or dangerous to health within the meaning of the Public Health (London) Act, 1936. A nuisance notice is about to be served upon the owner in accordance with sch. 5 to this Act.

The following points occur to me:

(*a*) As no notice of entry has been served in respect of this property (assuming that the service of notice to treat amounts to a contract for sale), it appears that the liability of the owner to comply with the nuisance notice falls under the general law affecting the position of parties after contract for sale, and that, as the owner is entitled to receive the rents and profits until completion or the taking of possession, he must also be liable for any outgoings including compliance with the nuisance notice.

(*b*) Compensation, however, falls to be determined as at the date of service of the notice to treat, and in effect the council, by requiring under their statutory powers the execution of works after the date of the notice to treat, will derive a benefit by an improvement in the property for which the owner will receive no compensation, and which, by virtue of the dual capacity in which the council are acting, they can themselves arrange.

It is felt that inequitable as the position may appear at first sight, the council really have no alternative. They are under a duty to implement the provisions of the Public Health (London) Act, 1936, and the fact that they are proposing to purchase the property in question should not alter the position, as it is believed it would be if, in fact, the sanitary authority and the purchaser were not one and the same person.

Would you please advise me as to whether you agree with my view or not, and if so, whether compliance with the nuisance notice can be enforced by proceedings, or if not, what action the council should take, and upon whom liability for the defects falls. ASTA.

Answer.

We agree. The notice to treat is an act of a neutral character, *i.e.*, something even less than a contract for sale, though it creates a relationship of a special kind: *Haynes* v. *Haynes* (1861) 30 L.J.Ch. 578. Nobody would suggest that a local authority ought to tolerate nuisances, etc., on land which, for example, the Railway Executive were in process of purchasing. We should regard it as sharp practice for a local authority to slow up their proceedings deliberately, for the purpose of forcing the vendor, under their statutory powers, to spend money for their benefit. But where they are acting *bona fide*, the vendor has really no ground for complaint: he receives the rents during the negotiations and must accept the burdens. He has his remedy by agreeing quickly to a price for the purchase, or by letting the purchasers in before the price is agreed. If he will do this last, the council should, we think, go in, and either demolish or repair the property themselves.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. *(contd.)*

Ninth Edition Now Ready

RYDE ON RATING

By

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